

PT 96-18
Tax Type: PROPERTY TAX
Issue: Religious Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

MORNING STAR WORLD OUTREACH)		
CENTER CHURCH, INC.)		
Applicant)		
)	Docket #	94-45-33
v.)	PIN #s	02-04-400-006
)		02-04-400-024
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Synopsis:

This matter concerns Kane County parcels numbered 02-04-400-006 and 02-04-400-024, for the 1994 assessment year.

The Illinois Department of Revenue (hereinafter referred to as the "Department") approved the exemption of parcel No. 02-04-400-006 which contained the church building of Morning Star World Outreach Center Church, Inc. (hereinafter referred to as the "Applicant"), and denied the exemption of parcel No. 02-04-400-024 which contained the caretaker's residence for the 1994 assessment year.

The issues in this matter include first, whether the applicant owned parcel No. 02-04-400-024 during the 1994 assessment year. The second issue is whether this applicant is a religious organization. The final issue is whether the applicant was using all or part of this parcel for either religious and exempt or residential purposes during the 1994 assessment year. Following a review of the file in this matter and the documents filed by the applicant, it is determined that the applicant owned this parcel during the 1994 assessment year. It is also determined that the applicant is a religious organization. Finally,

it is determined that the applicant was using the second floor of the caretaker's residence on this parcel for residential purposes and the remainder of this parcel for religious and exempt purposes during the 1994 assessment year.

Findings of Fact:

1. On August 2, 1994, the Kane County Board of Review transmitted an Application for Property Tax Exemption To Board of Review, concerning these parcels for the 1994 assessment year, to the Department.

2. On January 26, 1995, the Department notified the applicant that it was exempting parcel No. 02-04-400-006 and denying the exemption of parcel No. 02-04-400-024 for the 1994 assessment year.

3. On February 13, 1995, the applicant's then attorney requested a formal hearing in this matter.

4. On October 3, 1995, the applicant's attorney, by letter, requested an office disposition in this matter.

5. The applicant acquired the parcels here in issue by a warranty deed dated August 6, 1993.

6. During the 1994 assessment year, parcel No. 02-04-400-024 contained the church parking lot, a water detention area, a maintainece shed, a maintainece garage and a two story residential structure.

7. During 1994, the church parking lot was used by employees and persons attending church activities on the adjoining parcel.

8. During 1994, the water detention area was used for the storage of water as a part of the applicant's water control plan.

9. Both the church maintainece garage and the maintainece shed were used by the applicant for the storage of lawn equipment and supplies during 1994.

10. The upper level of the two story residential structure was occupied by the church caretaker as his residence. The lower level of that building contained a laundry area which was used for church purposes and the remainder of

that lower level was used by the applicant for storage, during the 1994 assessment year.

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

35 **ILCS** 200/15-40 provides in part as follows:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes...and not leased or otherwise used with a view to profit, is exempt,....

35 **ILCS** 200/15-125 provides in part as follows:

Parking areas, not leased or used for profit, when used as a part of a use for which an exemption is provided by this Code and owned by any...religious...institution which meets the qualifications for exemption, are exempt.

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967).

I conclude that the findings of fact in this matter establish that the applicant owned the parcel here in issue and the improvements thereon during the 1994 assessment year. I further conclude based on the fact that the Department

exempted Kane County parcel No. 02-04-400-006 that the Department has previously determined that the applicant is a religious organization.

From the findings of fact it is clear that all of Kane County parcel No. 02-04-400-024 and the buildings thereon were used for religious purposes, except the second floor of the caretaker's residence, which was occupied by the caretaker as his residence, during the 1994 assessment year.

In the case of MacMurray College v. Wright, 38 Ill.2d 272 (1967), the Supreme Court considered whether or not faculty and staff housing owned by a college, was used for school purposes. In that case, the Court applied a two-part test. First, were the residents of the houses required to live in their residences because of their exempt duties for the college, or were they required to, or did they perform any of their exempt duties there?

The Courts have more recently applied the MacMurray tests to caretaker's residences in Benedictine Sisters of the Sacred Heart v. Department of Revenue, 115 Ill.App.3d 325 (2nd Dist. 1987); Lutheran Child and Family Services of Illinois v. Department of Revenue, 160 Ill.App.3d 420 (2nd Dist. 1987); and also Cantigny Trust v. Department of Revenue, 171 Ill.App.3d 1082 (2nd Dist. 1988), among others. The applicant did not offer any evidence in this case concerning the duties or responsibilities of the caretaker in this case.

I therefore recommend that Kane County parcels numbered 02-04-400-006 and 02-04-400-024 be exempt from real estate tax for the 1994 assessment year, except for 1/2 of the land on which the caretaker's residence is located and the second floor of said residence.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
July ,1996